IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 857 of 1998
with
CRIMINAL MISC.APPLICATION No 858 of 1998
with
CRIMINAL REVISION APPLICATIONS Nos 168 to 251 of 1998
with
CRIMINAL MISC.APPLICATION No 5239 of 1997
with
CRI. MISC. APPLN. No 7717, 7719 and 9085 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

ROHIT CHUNUBHAI MEHTA

Versus

GUJARAT STATE FERTILIZER CO. LTD.

Appearance:

MR PRAKASH M THAKKAR senior advocate with
MR SV RAJU, MR.ATUL MEHTA, MR ANAND G BHATT &
MR RJ GOSWAMI for Petitioners.
MR KS NANAVATI senior advocate, MR.NITIN AMIN AND
MR PRABHAV MEHTA for Respondents
MR HL JANI APP for Resp.State.

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 17/01/2004

C.A.V. JUDGEMENT

1. All these matters involving common questions present a study in how and how long a criminal proceeding can be stalled at the threshold, can be converted into a cluster of cumbersome cases and, in effect, into a punishment for the complainant.

2. Simple basic and relevant facts of the complaints are that the complainant, Gujarat State Fertilizer Co. Ltd. (GSFC), appears to have supplied goods on credit to M/s. Garware Nylon Ltd., accused No.14, and received cheques towards payment or security. When two cheques dated 15.11.1994 of the total amount of Rs.12,19,111/- and other cheques were returned unpaid on the ground of "insufficient funds" and payments were not made even after legal notice, elaborate complaints, including the complaint dated 13.6.1995, were filed in the Court of the learned Chief Judicial Magistrate, Vadodara and, after recording statement of the Marketing Manager, who had filed the complaints for himself and on behalf of the Company, summons returnable on 26.7.1995 were ordered to be issued to all the accused (Nos.1 to 14) for the offences punishable under section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short) and sections 420 and 114 of the Indian Penal Code. The order for issuing summons appears to have been challenged in revision, being Criminal Revision Applications Nos.131 to 172 of 1995, which were dismissed on 21.3.1996. That common judgment and order was challenged in two Special Criminal Applications in this Court and those applications were permitted to be withdrawn on 2.8.1996 to enable the petitioners to move an application before the learned Chief Judicial Magistrate. Then, the application dated 17.8.1996 (Exh.25) appears to have been filed with a prayer to drop the proceedings and that application was rejected on 21.8.1997.

2.1 Out of the group of 14 accused persons, which include the chairman and managing director, other directors and general manager (finance) of the accused No.14 company, the accused No.6 is the petitioner in Criminal Misc. Application No.5239 of 1997, mainly praying quashing of the process issued to him in the original complaints and quashing of the order dated 21.8.1997 referred to hereinabove. Seven other accused persons have separately approached this Court by way of two special criminal applications which were converted

into Criminal Revision Application Nos.168 and 169 of 1998. Similarly, the other Criminal Revision Applications, being 170 to 251 of 1998, have joined the group along with the first mentioned Criminal Misc. Application No.5239 of 1997 and all the matters were, at the request of the learned counsel, treated as cognate matters, heard together and are disposed by this common judgment.

2.2 It must be noted at this stage that, after obtaining ad-interim stay against further proceedings in the original Special Criminal Application No.1161 of 1997 on 15.9.1997, this group of matters have been proceeded for final disposal only after vacation of the interim relief by order dated 25.9.2003 wherein reluctance of the petitioner to proceed was noted. Thus, the original complaints dated 13.6.1995 about dishonour of cheques issued in November 1994 are, after eight years, yet to proceed beyond the service of summons.

3. The original detailed complaints specifically allege that accused No.1 is the chairman and managing director, accused Nos.2 to 11 are the directors, accused No.12 is the director (finance) looking after financial affairs and accused No.13 is the general manager (finance) of the company, which is accused No.14. It is alleged that the complainant company used to give normal credit facility to the accused. That the policies of the accused company were decided by the board of directors and implemented by them through their subordinate officers. That the accused initially tried to impress the complainant by paying regularly for the supplies made to them and tried to create confidence and induced and deceived the complainant into delivering goods. That the credit against goods supplied was to be of 120 days. That the accused signed and delivered around 80 cheques of the total amount of Rs.5,19,31,838/- against supply of 756 MTs. of Caprolactum, the goods sold on credit. That the cheques were dishonoured. It is specifically alleged that "all the accused have fraudulently and dishonestly induced the complainant to deliver the goods to them on the pretext of issuing such cheques knowing fully well that, as there was insufficient bank balance, the cheques will not be honoured". It is also alleged in the complaint that the accused have not made payments and not taken any action to pay the sum of the cheques even after service of notice which clearly showed that, from the beginning, the accused had dishonest intention to cheat. The accused persons are arraigned for being directors and officers as being responsible for their acts done on behalf of the accused company. There is no controversy

about the averments that goods were supplied by the complainant, that cheques were issued by or on behalf of the accused, that they were dishonoured and that payments were not made even after service of the statutory notice.

4. Mr.Prakash Thakkar, learned senior counsel for the petitioner in Criminal Misc. Application No.5239 of 1997, submitted that necessary averments to rope in the directors of the company were missing in the complaints. He submitted that admittedly the complainant and the accused companies had long-standing business relations and supply of goods on credit was a transaction of purely civil nature which could not attract criminal liability. He further submitted that non-executive directors, who were neither alleged to be nor in fact in charge of the day-to-day business affairs of the company, could not be implicated under the provisions of section 141 of the NI Act merely because of being and as the directors of the accused company. A distinction was required to be made between the wholetime directors and officers of the company and the non-wholetime non-executive directors who would have received only a sitting-fee for each board meeting attended by them and who could not be held responsible for the day-to-day business affairs of the company, according to the submission. It was also submitted that the provisions of sub-section (2) of section 141 could be invoked only after it was proved that the offence was committed with the consent, or connivance or was attributable to any neglect on the part of any particular director, manager, secretary or other officer of the company.

4.1 Unreported judgments of this Court in Criminal Misc. Applications Nos.1678 of 1990 and 601 of 1991 and allied matters were relied upon to submit that, unless it was shown by necessary averments in the complaint that in fact the director was in charge of and was responsible to the company for the conduct of its business, a director cannot be impleaded as an accused merely because he was a director. It is held by this Court in BHARATBHAI K. PATEL v. C.L.VERMA [2002 (2) G.L.R. 1713] that if the petitioner was able to show that there was no existing debt or liability at the time of presentation of cheque for encashment, then in such cases the proceedings should be terminated and the accused should not be asked to face trial till it is concluded. It is also observed in the same judgment that, normally, Court is supposed to read the averments made in the complaint and, at the initial stage of the proceeding, High Court is not justified in entertaining and accepting the plea that there was no debt or liability. Defence pleas cannot be entertained

in quashing proceedings.

4.2 The judgment of the Supreme Court in K.P.G.NAIR v. JINDAL MENTHOL INDIA LTD. [(2001) 10 SCC 218] was relied upon for the following observations:-

> "8. From a perusal of section 141, it is evident that in a case where a company committed offence under section 138 then not only the company but also every person who at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. It follows that a person other than the company can be proceeded against under those provisions only if that person was in charge of and was responsible to the company for the conduct of its business."

4.3 The following observations of the Supreme Court in KATTA SUJATHA (SMT) v. FERTILIZERS & CHEMICALS TRAVANCORE LTD. [(2002) 7 SCC 655] were also relied upon:-

> "4. .....However, one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of section 141 of the Act nor was there any other allegation made against the appellant that she has connived with any other partner in the matter of issue of cheque. In these circumstances, the High Court ought to have examined the matter from this angle but on the other hand, the High Court merely stated that all the accused are not only in charge but are responsible for the conduct of the business of the firm. Indeed the same question has come up before this Court for examination in State of Karnataka v. Pratap Chand [(1981) 2 SCC 335] wherein the question as who is a "person in charge" of the business of a firm in the context of section 18-A of the Drugs and Cosmetics Act, 1940 was considered by this Court. This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The

person should (sic may) be a party to the policy being followed by a company and yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business."

4.4 The other judgments of the Supreme Court related to similar provisions in other Acts, viz. Girdhari Lal Gupta v. D.N.Mehta [AIR 1971 SC 2162], State of Haryana v. Brij Lal Mittal [(1998) 5 SCC 343] and Municipal Corporation of Delhi v. Ram Kishan Rohtagi [AIR 1983 SC 67], were relied upon in support of the submission that the whole body of directors of a company cannot be said to be in charge of the day-to-day management and running of the business of the company and cannot be attributed knowledge of everyday working of the company and, therefore, cannot be impleaded for prosecution. It was, in that context, also submitted that clear, unambiguous and specific allegation showing the exact role of each of the accused attributing consent, connivance or neglect were required to implicate a director or other officer of the company under the provisions of sub-section (2) of section 141. R. BANERJEE v. H.D.DUBEY [(1992) 2 SCC 552] was relied upon to submit that where no allegation that the offence was committed with the consent, connivance or negligence of the directors was found in the complaint, their inclusion as co-accused was not justified.

4.5 It was vehemently argued by Mr.Thakkar that, there being a managing director (accused No.1), a whole-time finance director (accused No.12) and a finance manager (accused No.13) and the signing and delivery of the cheques having been attributed to accused Nos.12 and 13 only, the rest of the directors were implicated only for being directors of the accused company on the assumption that they were responsible for the acts done on behalf of the accused company. As for the allegation of cheating punishable under section 420 of the Indian Penal Code, there are no specific allegations against any particular accused person, according to the submission. Thus, the burden of the arguments of Mr.Thakkar was that, as per the binding ratio of the judgment of the Supreme Court in K.P.G.NAIR (supra), "....a person other than the company can be proceeded against under those provisions only if that person was in charge of and was responsible to the company for the conduct of its business." He emphasized that the Supreme Court has referred to section 141 and held as above and hence it was not open for the complainant to argue that the provisions of sub-section (2) of section 141 were not considered in laying down the

law as above.

5. Learned counsel Mr.S.V.Raju, Mr.Atul Mehta and Mr.Anand Bhatt, appearing for the other petitioners, besides adopting the above arguments, submitted that some of the directors were practising professionals having independent reputation of their own and in fact not involved in the commission of the offences as alleged. It was submitted that the accused and the complainant companies had a long-standing business relationship, that the accused company being sick was a well-known fact and the cheques in question were given to the complainant only as a security for payment. In such circumstances, cheating or abetment of the offence of cheating was out of question. It was also argued that the trial Court did not have territorial jurisdiction to try the cases insofar as the cheques were drawn on the bank situated in Mumbai and were dishonoured at Mumbai and even the statutory notice was received by the petitioners in Mumbai. The learned counsel relied upon the judgments of this Court in DHARAMCHAND v. STATE OF GUJARAT [1980 (2) GLR 341], KAUNTEYE GAURANGBHAI NIMAKSARI v. STATE OF GUJARAT [1996 (2) GLH (U.J.) 33], RAVINDRA C. MEHTA v. MUSTA HUSEIN KARAM HUSEIN [1986 Cr.L.J. 1116], HRIDAYARANJAN PRASAD VERMA v. STATE OF BIHAR [(2000) 4 SCC 168], S.N.PALANITKAR v. STATE OF BIHAR [AIR 2001 SC 2960], 1990 Suppl. SCC 607, AJAY MITRA v. STATE OF M.P. [2003 SCC (Crimes) 703], VEMIREDDY SATYANARAYAN REDDY v. STATE OF HYDERABAD [AIR 1956 SC 379] and SHRI RAM v. STATE OF U.P. [1975 Cr.L.J. 240 (SC)].

6. Learned senior counsel Mr.K.S.Nanavati, appearing for the original complainant, submitted that not only the complaints contained necessary averments to, prima facie, make out the cases of offences under section 138 of the NI Act and sections 420 and 114 of the Indian Penal Code, but the statement on oath of the complainant recorded below the complaint substantiated the allegations in clear terms. Referring to the provisions of sections 291, 292 and 293 of the Companies Act and Regulation 70 of Schedule I of the Companies Act, 1956, he submitted that the board of directors was statutorily vested with the management and control of the company. Relying upon the quotations quoted by the Delhi High Court in GLOBE MOTORS LTD. v. MEHTA TEJA SINGH & CO. [1984 Company Cases 445], he submitted that directors were in the position of trustees and their liability to account for the company did not depend upon proof of mala fides. In addition to their fiduciary duties, the directors also owe a duty of care to the company not to act negligently in the management of its affairs - the standard being

that of a reasonable man in looking after his own affairs. "A director may be shown to be so placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of the company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the company."

6.1 He submitted that, in view of the admitted well-known sickness of the accused company to such an extend that its entire networth was wiped out and it was declared sick by the B.I.F.R. in the year 1993, it was not open for the directors to contend that the cheques to the tune of Rs.5 crores could have been issued against supply of raw materials without the knowledge, consent and connivance of the board of directors. He submitted that the offence under section 138 of the NI Act was completed as payments were not made even after the statutory notice was served upon each of the petitioners and neglect or connivance of the directors was manifest therein. He submitted that the financial difficulties of the accused company, the fact of it having been declared sick since 1993 and the alleged lack of mala fides could not be valid defences in the case of offence under section 138 of the NI Act and much less can they be grounds for quashing the complaint. He further submitted that a presumption had arisen under section 139 of the NI Act and, in any case, the payments against supply of raw materials had fallen due when the cheques were presented for realization.

7. Relying upon the judgments of the Supreme Court in MARUTI UDYOG LTD. v. NARENDER [(1999) 1 SCC 113] and MMTC LTD. [AIR 2002 SC 182], it was submitted on behalf of the complainant that the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness of the allegations. These are not cases where no case is made out or where the allegations were patently absurd. As held by this Court in K.C.SETHI v. STATE OF GUJARAT [2003 (1) GLH 82], truthfulness of allegations is a matter of trial and real state of affairs in the company of the accused were matters which could be gone into only when evidence in that regard is let in. As held by the Supreme Court in NAGAWWA v. VEERANNA SHIVALINGAPPA KONHALGI [AIR 1976 SC 1947], the magistrate is mainly concerned, at the stage of issuing

process, with the allegations made in the complaint or the evidence led in support of the same, and he is only to be, prima facie, satisfied whether there were sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

7.1 Mr.Nanavati also submitted that some of the petitioners were permitted to withdraw their earlier petitions in this Court to enable them to file applications in the trial Court in view of the judgment of the Supreme Court in K.M.MATHEW's case [JT 1991 (4) SC 464]; but its ratio is distinguished in the subsequent judgment of the Supreme Court in JOHN THOMAS v. DR. K. JAGDEESAN [JT 2001 (5) SC 398], according to which, section 258 of the Code of Criminal Procedure deals only with summons cases instituted otherwise than on a complaint. In such circumstances, the present group of cases is just multiplicity of repetitive and dilatory proceedings amounting to abuse of the process of Court, according to the submission.

7.2 As for the allegations for the offences under sections 420 and 114 of the Indian Penal Code, it was submitted, relying on the judgment of this Court in DIPENDRA G. CHOKSI v. DIPAK CHIMANLAL PATEL [1997 (2) GLR 1191 that, if, prima facie, offence of cheating was made out, the magistrate was justified in issuing process also for the offence under section 420 of the I.P.C. and the matter must be allowed to be proceeded further under section 244 of the Cr.P.C. The judgments of this Court in PUNJAB TYRE HOUSE v. STATE OF GUJARAT [2003 (1) GLR 18] and BALWANTBHAI DHARAMSINGHBHAI VARIA v. RAJNIKANT GORDHANBHAI PATEL [1993 (1) GLR 463] were relied upon in that regard.

7.3 With reference to the judgments of the Supreme Court in K.P.G.NAIR and KATTA SUJATHA (supra), it was submitted that those judgments were rendered in the particular facts and contentions in those cases and were not laying down any legal proposition in the context of the provisions of sub-section (2) of section 141 of the NI Act. Recent judgments of the Supreme Court in BHAVNAGAR UNIVERSITY v. PALITANA SUGAR MILLS (P) LTD. [(2003) 2 SCC 111] and DR. CHANCHAL GOYAL v. STATE OF RAJASTHAN [(2003) 3 SCC 485] were relied upon to submit that a decision is an authority for what it decides and not for what could be inferred from its conclusion; a little difference in facts or additional facts may make a

lot of difference in the precedential value of a decision.

8. Against the above backdrop of facts and contentions, it has to be decided whether the petitioners were legally entitled to be discharged at the threshold without being tried for any of the offences as alleged. Some basic propositions of law as well-settled by the judgments of the Supreme Court are required to be referred at this stage to steer clear of irrelevant considerations. As held by the Supreme Court in DALMIA CEMENT (BHARAT) LTD. v. GALAXY TRADERS & AGENCIES LTD. [(2001) 6 SCC 463], the Negotiable Instruments Act was enacted and section 138 thereof was incorporated with an express object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the activities in trade and commerce making provision for giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. The law in relation thereto is, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged. Section 138 of the Act makes a civil transaction an offence by fiction of law.

The Supreme Court has, in RAJESH BAJAJ v. STATE NCT OF DELHI [(1999) 3 SCC 259], also settled the proposition that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint, the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be bereft of even the basic facts which are

absolutely necessary for making out the offence. It may be that the facts narrated in the complaint would as well reveal commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. The crux of the postulate is the intention of the person who induces the victim by his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence.

9. Crime is an act attracting such strong disapprobation of the society that it is forbidden and made punishable by law. Ideally, a cheque or a negotiable instrument should be as infallible as genuine currency of the country. Although, transaction of supply of goods or service on credit and payment by cheque apparently looks like commercial transaction, dishonour of cheque, per se, constitutes an offence subject to fulfillment of the prescribed conditions precedent and subsequent. Since cheque is a negotiable instrument of great commercial convenience and currency, it's dishonour comes as a shocking betrayal for the holder and may have a deleterious and cascading effect on the lives and financial health of many others. It is, therefore, made punishable not only with fine but sentence of imprisonment. When such offence is committed by or, more appropriately, in the name of a company, the law casts its net wider to cover and implicate natural persons who might have directly or indirectly contributed to the commission of the offence or who could have prevented it. The composite scheme of the provisions of section 141 of the NI Act clearly appears to be that every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business as also the office bearers like directors, manager etc. could be implicated irrespective of their actual participation in the acts or omissions constituting the offence of dishonour of cheque. It, therefore, follows that in order to implicate such persons, office bearers or officers of the company, they need not have actually signed or delivered the cheque or abstained from taking steps to see that the cheque was realized or payment was made at least within 15 days of the receipt of notice under section 138. The offence of dishonour of cheque comes into being by a deeming clause in section 138 of the NI Act and, in case of offence by companies, the natural persons are again held guilty by a deeming fiction as provided in the provisions of section 141 of the NI Act. To elaborate by an example,

theoretically, the Secretary of a company may be prosecuted for and held guilty of the offence of dishonour of cheque issued by the company without having done anything except consenting to or conniving at the commission of the offence. Such being the statutory scheme, the relevant provisions have to be so interpreted and applied as to further the objective and prevent their frustration.

9.1 It is true that, in case of the offence by a company, a person, for being charged with the offence, has to be shown to be in charge of and responsible to the company in the conduct of its business. Such person could as well be a director or officer of the company to be covered by sub-section (1) of section 141. It must be noted that such person in charge of and responsible to the company in the conduct of its business is not required, in order to be implicated in the offence of dishonour of cheque, to be shown also to have actually committed any act. However, under the proviso to sub-section (1), he cannot be punished if he proves that the offence was committed without his knowledge or despite his due diligence to prevent the commission of the offence. Sub-section (2) of section 141, opening with a non-obstante clause, covers a wider spectrum of persons, irrespective of their being in charge of or responsible to the company, if the offence were proved to have been committed with their consent, connivance or neglect. It is trite that, in order to prove implicating facts against a person, such person has to be impleaded as an accused person.

9.2 It is seen earlier that all the ingredients essential to implicate a person need not be clearly spelt out in detail in the complaint. At the stage of investigation or initiation of trial, a strict and hypertechnical approach of sieving the complaint through a cullendar of the finest gauzes for testing the ingredients is clearly disapproved by the Supreme Court in RAJESH BAJAJ (supra). Therefore, at this stage, it has to be broadly seen whether factual foundation for the offence has been laid in the complaint and the question of quashing the complaint or declaring that no criminal offence was made out arises only in extremely rare cases of the complaint being bereft of even the basic facts absolutely necessary for making out the offence.

9.3 Having regard to the above basic legal premises, the defences and contentions of the petitioners to the effect that some of the petitioners were non-wholetime non-executive directors not concerned with the day-to-day

affairs of the company and not having signed or delivered the cheques cannot be considered at this stage. Equally irrelevant at this stage are the contentions that the complainant and the accused companies had long-standing business relationship and that the cheques were issued only by way of security which failed without any mala fides or mens rea on the part of the petitioners.

10. There are clear allegations in the complaint suggesting knowledge and consent of the petitioners as the directors of the accused company in purchasing huge stocks of raw materials from the complainant and issuing number of cheques towards payment or for securing payment without actual payment or realization of the cheques being arranged for. Prima facie, it would be difficult to assume that cheques in the sum exceeding Rs.5 crores could have been issued by the persons in charge of the company without the knowledge or connivance of the board of directors. The course of events culled out from the record, prima facie, lends credence to the allegations of the complainant that it was induced and deceived into delivering goods on credit against the security of cheques which bounced when presented for realization. Thus, the allegations against the petitioners indicate larger offences of cheating or abetment thereof within which the monetary transaction of issuance of cheques and dishonour thereof will have to be examined on the basis of evidence that may be led at the trial. When it is alleged that the offences were committed by the company as well as the directors collectively, it would not be necessary to separately allege that each director had consented to or connived at the commission of the alleged offences. It is not just a case of bald allegation of the petitioners being responsible as directors of the company whose cheques were dishonoured but, instead, specific statements on oath are made by the complainant to allege that the accused had issued cheques with the intention of cheating.

10.1 As for the territorial jurisdiction of the Court at Vadodara, by the judgments of the Supreme Court in K. BHASKARAN v. SANKARAN VIDHYAN BALAN [JT 1999 (7) SC 558] as followed by this Court in CHEMOX v. GNFC [2003 (44) GLR 424], it is settled that complainant can choose any one of those Courts within whose jurisdiction any one of the five acts constituting the offence had taken place; which acts include failure to pay within 15 days of the receipt of notice under section 138 of the NI Act. In the facts of this case, the goods having been supplied by the complainant at Vadodara and the amount of the cheques having been payable, after notice, at Vadodara,

the Court thereat had the jurisdiction to take cognizance of the offences.

10.2 In the above circumstances, the impugned order of the trial Court rejecting the application (Exh.25) for dropping the cases is legal, justified and does not require any interference. In fact, after the judgment of the Supreme Court in JOHN THOMAS (supra), the original application (Exh.25) would not have lied.

11. Under the circumstances and for the reasons discussed hereinabove, the petitions and the applications are required to be rejected without in any way meaning to influence the findings on any of the relevant facts which can be arrived at only after leading of evidence and appreciation thereof. However, since the petitioners have obviously taken recourse to repetitive agitation of the same controversies through multiplicity of proceedings and put the complainant to unnecessary and avoidable expenses, not to mention clogging of the Court, it is necessary and in the interest of justice that suitable order for payment of costs is made. The revisional jurisdiction as also the plenary inherent powers of this Court could be invoked for preventing abuse of the process of Court or to secure the ends of justice or if a failure of justice has in fact been occasioned. In the facts of the present case, the proceedings appear to have been carried on for years by the petitioners, invoking those powers, to defeat the legal process and cause failure of justice by causing inordinate delay and unbearable costs. Therefore, each of the petitions and applications of each of the petitioners is rejected and each of the petitioner is ordered to pay to the original complainant Rs.5000/- by way of costs. Rule is discharged in each of the application/petition and interim relief is vacated with a direction to the trial Court to proceed with the original criminal cases as expeditiously as practicable.

Criminal Misc. Applications Nos.7717, 7719 and 9085 of 2003 do not survive in view of the above order. These applications are accordingly rejected. Notice in each application is discharged.

Sd/-

(D.H.Waghela,J.)

12. Upon pronouncement of the above judgment today, a request was made to stay the operation of the aforesaid order for a period of minimum six weeks because some of the petitioners propose to approach the higher forum,

particularly in view of the recent order in ASHOK LEYLAND FINANCE LTD. v. R.S.AGGARWAL [2003 (10) SCALE at page 1000] referring certain issues to a larger Bench. The request is rejected in the facts and circumstances of the cases.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)